UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BARBARA A. BALEJKO AND CASS BALEJKO,
PLAINTIFFS,

v. CA 76-3877-T

MILTON HOSPITAL, INC. AND ANNELLA BROWN,
DEFENDANTS.

Order.

TAURO, D.J.

Despite the best efforts of plaintiff's counsel, I am not persuaded by the evidence that there was any negligence or misrepresentation on the part of either defendant.

Indeed, the evidence persuades me to the contrary.

And so I find for the defendants on all counts.

It is ordered that judgment shall enter, and judgment is hereby entered, in favor of the defendants.

J. TAURO
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION 76-3877-T

BARBARA A. BALEJKO AND CASS BALEJKO

v.

MILTON HOSPITAL, INC. AND ANNELLA BROWN

Plaintiffs Motion for a New Trial.

Now come the plaintiffs in the above entitled case and respectfully move that the court order that a new trial be granted for the reasons that:

1. The decision is against the evidence.
2. The decision is against the weight of the evidence.
3. The decision if allowed to stand, will result in a miscarriage of justice.

By their Attorney,

JOSEPH P. MCDONOUGH, ESQUIRE
1372 Hancock Street
Quincy, Massachusetts 02169
Telephone 617-479-4100

Certificate of Service.

I, Joseph P. McDonough, Attorney for the plaintiffs in the above case hereby certify that on the 14th day of October, 1981, I served a copy of the above on the other parties hereto by mailing the same, first-class postage prepaid, to their Attorney, Stephen A. Moore, c/o Gaston Snow & Ely Bartlett, One Federal Street, Boston, Massachusetts 02110.

Filed: October 14, 1981 JOSEPH P. MCDONOUGH, ESQUIRE

UNITED STATES COURT OF APPEALS

First Circuit

DECISIONS WITHOUT PUBLISHED OPINIONS

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Title	Docket Number	Date	Disposition	Appeal from and Citation (if reported)
Balejko v. Milton Hosp. .	81-1806	6/24/82	Affirmed	D.Mass.
Bryant v. Secretary of Health and Human Services	82-1055	6/29/82	Affirmed	D.Me.
Harrington v. International Brotherhood of Painters & Allied Trades .	82-1222	6/29/82	Vacated and Remanded	D.Mass.
Chicco v. Tierney	81-1880	6/30/82	Affirmed	D.Mass.

This order entered June 24, 1982

Per Curiam. Appellants raise three issues on appeal.

First, they argue that the district court erred in granting appellees an extension of time in which to file their responses to requests for admissions. The responses were permitted to be filed one day late, the tardiness being caused by counsel's error in calendaring the response date. The district court had the authority to extend the time under Fed.R.Civ.P. 6(b)(2). We review such extensions only to determine if there has been an abuse of discretion. *Manhatton-Ward, Inc.* v. *Grinnell Corp.*, 490 F.2d 1183, 1186 (2d Cir. 1974). There was no abuse shown in this case, especially where the responses now objected to were in fact introduced into evidence by the appellants themselves.

Second, the appellants assert that they were denied the right to present requests for rulings of law. There is nothing in the record to indicate that such requests were either made or denied. Appellants argue that a part of the transcript is missing but have made no effort to fill the gap under Fed.R.App. P. 10(c). Moreover, they have not shown how or why they were harmed by the alleged denial.

The third issue, which is not raised explicitly but by reference to Fed.R.Civ.P. 52, is the court's failure to make written findings of fact and rulings of law. It is clear that at the time appellants waived their right to a jury trial both parties agreed on the record to try the case as if to a jury, with the court as the fact finder. Appellants cannot now renege on their agreement.

The judgment of the district court is affirmed.

Because this appeal is frivolous, double costs are awarded to appellees. Fed.R.App.P. 38.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1806.

BARBARA A. BALEJKO, ET AL.,
PLAINTIFFS, APPELLANTS,

v.

MILTON HOSPITAL, ET AL.,
DEFENDANTS, APPELLEES.

Before CAMPBELL, BOWNES and BREYER, *Circuit Judges*.

Memorandum and Order.

Entered August 3, 1982

Upon consideration of appellant's motion to reconsider it is hereby denied. It is ordered that the opinion in this case be amended by striking all after the first paragraph and inserting in lieu thereof the following:

> Second, the appellants complain that they were denied the right to present requests for rulings of law. The court, however, indicated that it would hear oral argument, and apparently did so. We cannot say that it abused its discretion in declining to receive written requests for rulings.

Third, appellant calls our attention to Fed.R.Civ. P. 52, apparently to challenge the district court's failure to make written findings of fact and rulings of law. While courts are obligated by Rule 52 to make such findings and conclusions and while it has been held that this requirement "may not by waived by the parties," *Swanson* v. *Levy*, 509 F.2d 859, 861 (9th Cir. 1976), we do not think that a remand is required in this case as "a complete understanding of the issues . . . may be had from the record on appeal." *Id.*; *Rivera Morales* v. *Benitez de Rexach*, 541 F.2d 882, 884 n.2 (1st Cir. 1976).

The judgment of the district court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.